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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 515, and 552

[Change 72; GSAR Case 2008-G506; Docket 2008-0007; Sequence 14]

RIN 3090-AI76

General Services Administration Acquisition Regulation (GSAR);

Rewrite of GSAR Part 515, Contracting by Negotiation

AGENCY: Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule to amend the General Services Administration Acquisition Regulation (GSAR) to clarify and update the contracting by negotiation GSAR section. The rule updates GSAR part 515 by eliminating out of date references and reorganizes the text to align with the Federal Acquisition Regulation (FAR). The final rule incorporates many of the changes of the proposed rule and makes additional modifications to the text.

DATES: Effective: **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: For clarification about content, contact Ms. Dana Munson at 202-357-9652. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat Division

(MVCB), 1800 F Street, NW, Washington, DC 20405, (202) 501-4755. Please cite GSAR Case 2008-G506.

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule in the Federal Register at 73 FR 57580 on October 3, 2008 (<https://federalregister.gov/a/E8-22745>) revising GSAR Part 515 as part of the General Services Administration Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to update the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR).

The final rule updates the text addressing GSAR part 501, General Services Administration Acquisition Regulation System, part 515, Contracting by Negotiation, and corresponding provisions and clauses in GSAR part 552, Solicitation Provisions and Contract Clauses. Streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships are also implemented with this final rule.

The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy. Five comments were received in response to the Federal Register notice and

were considered in crafting the final rule. Comments received in response to the 2008 Federal Register publication along with collaborative input from both Federal Acquisition Services (FAS) and Public Buildings Services (PBS) Offices of Acquisition Management were considered in drafting the final rule.

II. Discussion and Analysis

A. Summary of significant changes.

The proposed rule published in October, 2008 moved clauses associated with GSA's Multiple Award Schedule (MAS) contracts to GSAR part 538, Federal Supply Schedule Contracting, as part of the Rewrite initiative. However, only GSAR 515.209-70(c) and (d) and its associated clause 552.215-71 have been moved to part 538 through GSAR Case 2013-G502, Administrative Changes. Therefore, the remaining MAS provisions and clauses will be retained in GSAM part 515 per the final rule until addressed in separate GSAR 538 cases.

The proposed rule also transferred requirements from the regulatory GSAR part 515 to the non-regulatory GSAM as the requirements apply internally to GSA and not the public. These changes are reflected in the final rule.

The final rule makes additional changes based upon the comments received in response to the proposed rule and

further edits existing GSAR 515 text. The specific changes to GSAR part 515 are as follows:

- GSAR 501.106 - Aligned Office of Management and Budget (OMB) Control Number 3090-0163 with GSAR Clause 552.215-73, Notice.

- GSAR 515.204 - Moved the text from subsection 515.204-1 to section 515.204 to parallel FAR section 15.204, identifying in paragraph (a) that the uniform contract format is not required for leasing. Added paragraph (b) identifying the Senior Procurement Executive (SPE) as the designee per FAR 15.204(e).

- GSAR 515.204-1 - Deleted paragraphs (a) and (b) were moved to other sections of GSAR Part 515.

- GSAR 515.205 - Deleted. When a contracting officer uses the government-wide point of entry, such as FedBizOpps, the contracting officer need not specifically send a solicitation to anyone, including the incumbent.

- GSAR 515.209 - Added paragraphs (a) through (c) to align all GSAM part 515, Solicitation provisions and contract clauses, with FAR 15.209.

- o Paragraph (a) is the prescription for clause 552.215-70, Examination of Records by GSA. Edits made to the text include deleting the subtitle "Clause for

other than multiple award schedules.” Replaced “\$100,000” with “simplified acquisition threshold” and the word “you” with “contracting officer”. Eliminated the dashes in the titles, “Assistant Inspector General-Auditing” and “Regional Inspector General-Auditing, replacing each dash with “for”.

- o Paragraph (b) is the prescription for clause 552.215-73, Notice, moved from GSAM 515.204-1(b)(1) and (2), notifying the public of the assignment of OMB Control Number 3090-0163 to the information collection requirements contained in the solicitation and contract, and of GSA’s hours of operation for requests of pre- or post-award debriefings.

- o Paragraph (c) is the new prescription to use GSAR clause 552.215-74, Notice about Releasing Proposals, when using non-government evaluators.

- o Paragraph (d) Clause for Multiple Award Schedules changes “Multiple Award Schedules (MAS)” to “Federal Supply Schedules (FSS);” Clause should be used in all FSS solicitations and contracts.

- GSAR 515.305 - Moved from the regulatory to the non-regulatory as it is only applicable internally to GSA.

- GSAR 515.305-70 - Deleted paragraph (a) was made non-regulatory, the solicitation notice in paragraph (c) was

moved to 515.209-70(c) and the "Notice" itself was converted into clause 552.215-74.

- GSAR 515.70 - The subpart, "Use of Bid Samples", is deleted in its entirety as it is duplicative of FAR 14.202-4.

- GSAR 552.215-70 - Replaced "\$100,000" with "simplified acquisition threshold".

- GSAR 552.215-73 - Added a new clause, notifying the public of OMB Control Number assigned to information collection requirements contained in the solicitation and contract, and GSA's hours of operations.

- GSAR 552-215-74 - Added a new clause for inclusion in solicitations when non-government evaluators will be used.

B. Analysis of public comments.

The public comment period for GSAR Part 515 closed on December 2, 2008, five comments were received from two respondents. A discussion of these comments is provided below:

Comment 1: The respondent recommended consideration be given to providing guidance on which section of the Uniform Contract Format (UCF) the mandated paragraphs should be incorporated. GSAR 515.210-70 provides guidance

to include this on GSA Form 1602 if it is used, but what if it is not used?

Response: Guidance will be added to the GSAM to clarify that the information should be placed in Section L of the solicitation.

Comment 2: GSAR 515.205: The respondent strongly recommended deleting this entire section, which requires contracting officers to issue solicitations to potential sources. The respondent stated that there is little value added, especially since we no longer maintain mailing lists. Potential offerors download the solicitations from FedBizOpps, so there is rarely written interest expressed, positive or negative. The guidance provided doesn't appear to add any real value as any contracting officer should know to do this without having it spelled out. Even if the section is not deleted, paragraph (a) needs to be deleted. This paragraph causes a problem when the follow-on acquisition strategy differs from the current and historical.

Response: Concur. This section is deleted. The GSAR text of the final rule is amended as a result of this comment.

Comment 3: GSAR 515.209-70(c): The respondent stated that this section, which requires the contracting officer

to insert the clause at 552.215-71 Examination of Records by GSA (Multiple Award Schedule) in solicitations and contracts for MAS contracts, does not appear to relate to the Examination of Records clauses. The respondent recommended clearly identifying when this notice should be included. Not all solicitations will be reviewed by nongovernment evaluators, yet as currently written it appears to state this notice should always be included. The following revision was recommended:

"(c) Solicitation notice. When nongovernment evaluators will be used, include in the solicitation a notice substantially as follows:"

Response: Concur. Clause 552.215-74, Notice about Releasing Proposals is amended to include nongovernment evaluators. The prescription at 515.209-70(c) is amended to clarify that the clause is only applicable when nongovernment evaluators are used. The GSAR text of the final rule is amended as a result of this comment.

Comment 4: GSAR 515.7002(b)(1): The respondent stated that the actual prescription for use of GSAR clause 515.70 Use of Bid Samples needs to be added. Currently it just states "use the clause."

Response: Non-concur. GSAR subpart 515.70, Use of Bid Samples, is deleted in the final rule of the GSAR text as

it unnecessarily duplicates the FAR. No changes were made to the GSAR text of the final rule as a result of this comment.

Comment 5: The respondent stated, both the current GSAR 515.204-1 and the proposed revision indicate that the paragraph regarding debriefing requests does not apply to leasehold interests in real property. The respondent was curious as to why this is so: are there no debriefings under leasehold acquisitions? If so, then there could be a separate Part 570 clause addressing only the OMB and Nondisclosure/Conflict of Interest requirements.

Response: Non-concur. GSAR 570.309 addresses debriefings under leasehold acquisitions. No changes were made to the GSAR text of the final rule as a result of this comment.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing

rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the revisions are administrative in nature and only update and reorganize existing GSAR coverage.

V. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090-0163.

List of Subjects in 48 CFR Parts 501, 515, and 552

Government procurement.

Dated: May 26, 2016

Jeffrey A. Koses,
Office of Acquisition Policy,
Senior Procurement Executive,
General Services Administration.

Therefore, GSA is amending 48 CFR parts 501, 515 and 552 as set forth below:

**PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION
REGULATION SYSTEM**

1. The authority citation for 48 CFR part 501 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c).

501.106 [Amended]

2. Amend section 501.106 by adding to the table, in numerical sequence, GSAR Reference "552.215-73" and its corresponding OMB control number "3090-0163".

PART 515—CONTRACTING BY NEGOTIATION

3. The authority citation for 48 CFR part 515 is revised to read as follows:

AUTHORITY: 40 U.S.C. 121(c).

4. Revise section 515.204 to read as follows:

515.204 Contract format.

(a) The uniform contract format is not required for leases of real property (See GSAM 570.116).

(b) The Senior Procurement Executive is the agency head's designee for the purposes of granting exemptions to the use of the Uniform Contract Format (see FAR 15.204(e)).

515.204-1 and 515.205 [Removed]

5. Remove sections 515.204-1 and 515.205.

6. Amend section 515.209-70 by-

a. Revising the introductory text of paragraph (a);

b. Redesignating paragraph (b) as paragraph (a)(9)

and revising newly redesignated paragraph (a)(9); and

c. Adding new paragraph (b).

The revisions and addition read as follows:

515.209-70 Examination of records by GSA clause.

* * * * *

(a) Examination of records by GSA clause for other than multiple award schedule (MAS) contracts. Insert the clause at 552.215-70, Examination of Records by GSA, in all solicitations and contracts above the simplified acquisition threshold, including acquisitions of leasehold interests in real property, that meet any of the conditions listed below:

* * * * *

(9) The contracting officer may modify the clause at 552.215-70 to define the specific area of audit (e.g., the use or disposition of Government-furnished property). Office of General Counsel or the Office of Regional Counsel and the Assistant Inspector General for Auditing or Regional Inspector General for Auditing, as appropriate, must concur in any modifications to the clause.

(b) Insert the clause at 552.215-73, Notice, in all solicitations for negotiated procurements above the simplified acquisition threshold in accordance with FAR part 15.

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515.5 and 515.70 [Removed]

7. Remove subparts 515.3 and 515.70.

PART 552—SOLICITATIONS AND PROVISIONS

8. The authority citation for 48 CFR part 552 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c).

9. Amend section 552.215-70 by revising the introductory text and the date of the clause, and removing “exceeding \$100,000” and adding “exceeding the simplified acquisition threshold” in its place.

The revisions read as follows:

552.215-70 Examination of Records by GSA.

As prescribed in 515.209-70(a), insert the following clause:

EXAMINATION OF RECORDS BY GSA ([JUN 2016])

* * * * *

10. Add section 552.217-73 to read as follows:

552.215-73 Notice Regarding Information Collection Requirements.

As prescribed in 515.209-70(b), insert the following clause:

NOTICE (JUN 2016)

(a) The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.

(b) GSA's hours of operation are 8:00 a.m. to 4:30 p.m. EST. Requests for pre-award debriefings postmarked or otherwise submitted after 4:30 p.m. EST will be considered submitted the following business day. Requests for post-award debriefings delivered after 4:30 p.m. EST will be considered received and filed the following business day.

(End of clause)

BILLING CODE 6820-61

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